IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8619 of 1999
With
CIVIL APPLICATION No. 6591 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PADMINIKUMARI MINOR THRO' HER GUARDIAN KRISHNAKUVARBA & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioners,
GMR M R MENGDEY AGP for Respondent(s) : 1 - 3.
M/S PATEL ADVOCATES for Respondent(s) : 1,
MR HM JADEJA for Respondent(s) : 4,
RULE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/05/2007

COMMON JUDGEMENT

1. Heard Mr.J.M. Patel, learned counsel for the petitioners and Mr.M.R. Mengdey, learned Assistant Government

Pleader for the State.

2. By this petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the correctness, validity and propriety of the order dtd.10/8/1981, passed by the Dy.Collector in Ceiling Case NO.16 of 1981 (Sec.8) refusing to accept the transaction of sale wherein, agreement to sell was entered on 8/5/1970 and the sale deed was executed on 28/4/1972 and; order dtd.8/7/1999 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/BA/428/93.

3. Short facts necessary for disposal of the present matter are that one Natvarsinhji Sartansinhji was holding 90 Acres and 20 Gunthas (it could be 26 Gunthas even) land at Kathwada in Prantij Taluka of Sabarkantha District. The case of the petiioners is that they agreed to sell the property in favour of Bhavansinh Dipsinh Rahevar on 8/5/1970 with a stipulation that 33 Acres and 26 Gunthas of land would be sold to the said purchaser. Agricultural Land Ceiling Act earlier provided larger limit of the agricultural land, but the Government of Gujarat decided to reduce it, therefore, an amendment was made in the

year 1972. The Government of Gujarat passed Act No.2 of 1974 and made it effective from 1/4/1976. Sec.8 of Act No.2 of 1974 provided that any transaction in relation to the land whereunder, the land is transferred in favour of transferee, if is made between 24/1/1971 and 1/4/1976, then such transaction would be deemed to have been taken to defeat the provisions of the Act, unless on an application under Sec.8 of the Act, the Competent Authority holds that such transfer was bonafide.

4. The sale deed was executed on 28/4/1972 and Mutation Entry No.208 was made on 20/5/1972. After coming into force of Act No.2 of 1974, petitioners' predecessor-in-title namely Natvarsinhji made an application under Sec.8, the Dy.Collector made an inquiry and rejected the said application vide his order dtd.4/5/1977. Being aggrieved by the said order, Natvarsinhji filed Revision Application No.699 of 1977 before the Gujarat Revenue Tribunal, the said revision was allowed by the Gujarat Revenue Tribunal vide its order dtd.16/1/1978 and the matter was remanded to the Dy.Collector for making an inquiry afresh and deciding the matter in accordance with law.

5. After the remand, the Dy.Collector registered the matter as Case No.Ceiling/Sec.8/60/81 and provided appropriate opportunity of leading evidence and hearing to the parties. On 26/7/1978, the parties closed their evidence and thereafter the matter was adjourned for one reason or the other. The application filed under Sec.8 was dismissed vide order dtd.10/8/1981. The original holder namely Natvarsinhji died on 30/12/1981, therefore, the present petitioners being successors and legal representatives of Natvarsinhji filed Revision Application No.TEN/BA/428/93 before the Gujarat Revenue Tribunal, the said Revision came to be dismissed on 8/7/1999, being aggrieved by the said orders, the petitioners are before this Court.

6. It is to be noted that present writ application came to be filed in the year 1999 with two Annexures, copy of the order dtd.10/8/1981 passed by the Dy.Collector, Sabarkantha (Annexure-A) and copy of the order dtd.8/7/1999 passed by the Gujarat Revenue Tribunal (Annexure-B). For almost about eight years, nothing was done and all of a sudden, on the eve of the arguments,

Mr.J.M. Patel, appeared for the petitioner and filed an application dtd.3/5/2007 seeking amendment. The original petition runs into 14 pages and the amendment application runs into 28 pages. Along with the amendment application, certain documents have been filed which include agreement dtd.8/5/1970, copy of the sale deed dtd.20/4/1972, copy of the order passed by the Gujarat Revenue Tribunal on 16/1/1978, copy of the statement of Natvarsinhji Sartansinhji dtd.13/6/1978, copy of statements of Bhavansinh Dipsinh recorded on 26/6/1978 and copy of the Rojkam. If these documents are part of the original records, then there would be no problem in perusing these documents. Non-reference of these documents in the writ application would also not prejudice anybody. Unfortunately, the petitioners, by Civil Application No.6591 of 2007 want to incorporate some questions relating to facts and want to raise certain questions which were never raised before the subordinate authorities / Tribunal.

7. So far as the factual aspects are concerned, the facts are not in dispute, but the question would be that whether the amendment relating to a question which was never

argued before subordinate authority / Tribunal should be allowed to be raised. In the opinion of this Court, when the application seeking amendment is filed almost after eight years, that too, on the eve of the arguments, then, the application cannot be taken to be a bonafide application. Though the documents can be taken into consideration, but I will not allow the petitioner to seek the amendment in the main writ application. The Civil Application No.6591 of 2007 deserves rejection.

8. It is submitted that agreement was entered into between the parties on 8/5/1970 and narrow construction of Sec.8 of the Gujarat Agricultural Land Ceiling Act would not be permissible. It is the submission of the learned counsel for the petitioners that if somebody has entered into an agreement to sell the property, then such agreement would amount to transfer of the property. Placing reliance upon the judgement of the learned Single Bench of this Court in the matter of Lajjashanker Keshavji Joshi Vs. State of Gujarat, reported in 1985 (2) GLR 658, it is submitted that the word “transfer” if is taken to be one under Transfer of Property Act, only then, it is likely to lead to many

problems. The submission is that transfer would include an agreement to transfer.

9. The question has been raised in ground No.7 of the writ application and the judgement in the matter of Lajjashanker Keshavji Joshi (Supra) has also been relied upon, but the ground according to the learned Assistant Government Pleader for the State, was not raised before the subordinate Tribunal. When Mr.Patel was asked that whether such ground was raised before the Gujarat Revenue Tribunal, he stated in the open Court that such ground was so raised. On being asked to read the said ground and findings recorded by the Gujarat Revenue Tribunal, Mr.Patel referred to para 6 and part of para 9. Para 6 has nothing to do with the arguments, while para 9 simply refers to facts, para 9 states that initial Banakhat was executed on 8/5/1970 between the parties and thereafter, sale deed was executed and duly registered on 28/4/1972. In para 9 despite reading it twice and even after reading it with Mr.Patel, I am unable to find the question which is now posed before this Court. In a petition under Article 227 of the Constitution of India, High Court has to exercise its

powers of superintendence and not powers of appellate or revisional court. Any person aggrieved by some order is required to satisfy the Court that the order suffers with patent illegality, latent defect either on face or on the procedure and the error is apparent on the face of the records. If particular question was never raised and argued before the Tribunal, then the order passed by the Tribunal cannot be condemned on such a ground. Even otherwise, this Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is not required to correct every error of law. The High Court is required to correct those errors which lead to illegality and cause injustice to the party. If a particular question was not raised before the subordinate Tribunal, then courtesy demanded that such question should be argued before the High Court with the permission of the Court.

10. It has become fashion these days to raise new question in the writ memo, annex documents for the first time in the High Court without telling the High Court that such question was not raised before the subordinate Tribunal nor documents were filed before the said authority, nor

the documents were forming part of the records of the subordinate authority / Tribunal. This in fact, would be an unfair practice. At least at the level of High Court, one is required to keep the records straight, one must come out with a case that a question which required consideration was not raised, therefore, permission be granted to such party to raise the question for the first time in the High Court.

11. It is trite to say that question of facts and mixed question of facts and law and some time, pure question of law, cannot be raised for the first time in the High Court or before the Apex Court. The matter would assume serious importance when the proceedings are under Article 227 of the Constitution of India and orders passed by the subordinate authority / Tribunal are challenged on the ground of non-application of mind, mis-appreciation of facts and law.

12. The order passed by the Gujarat Revenue Tribunal cannot be condemned saying that it suffers with non-application of mind. If particular question was not raised before the Gujarat Revenue Tribunal, the Gujarat

Revenue Tribunal was not to decide that question, otherwise, the tribunal would have been condemned with the allegation that a particular question was not raised and the Tribunal decided the same.

13. In the present matter, interpretation of Sec.8(1) of the Act has been made by the learned Single Judge. Sub-Sec. (1) of Sec.8 reads “Where after 15th day of January, 1959, but before the commencement of this Act or after 24th day of January, 1971, but before the Specified Date any person has transferred whether by sale, gift, mortgage with possession, exchange, lease, surrender, or otherwise, or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force, such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation or order to defeat the object of this Act, where such transfer or partition was made after 15th day of January, 1959, but before the commencement of the Act or any order to defeat the object of the Amending Act of 1972, where such transfer was made after 24th day of January, 1971, but before the specified date. A fair reading of Sec.8(1) would make it

clear that the ban is against every type of transfer. The transfer may be by way of sale, gift, mortgage with possession, exchange, lease, surrender or otherwise or a partition of any land. Transfer, in fact, would have two components, transfer of the possession and transfer of the title, including rights and interest in the property. When somebody enters into an agreement to sell or purchase any property, then such agreement becomes a contract which is enforceable under the law and the party holding benefit under the contract is entitled to go to the Civil Court for performance of the contract for recession of the contract or revocation of the contract. In such a case, court of competent jurisdiction would decide whether such contract should be enforced specifically or not. In case, court grants a decree for specific performance of the contract, then, such person would be entitled to a sale deed in his favour and if he does not happen to be in possession, he would also be entitled to a decree for possession. If such a suit is dismissed, then, agreement to sell would lose all its importance and would not carry any meaning. An agreement simply confers certain rights upon the purchaser so also on the seller, but that does not

transfer the right, title and interest in the property. In the opinion of this Court even if the agreement was entered into on 8/5/1970, the sale agreement would not amount to a transfer and under such circumstances, the petitioner would not be entitled to submit before this Court that the transfer was effected before 24/1/1971 and under the circumstances, Sec.8 was not to apply. This question is being raised for the first time before this Court, but unfortunately, was not raised before the subordinate authorities / Tribunal.

14. No other issue was argued by the learned counsel for the petitioners before this Court.

15. In view of the discussion aforesaid, I have no hesitation in dismissing Special Civil Application No.8619 of 1999 so also Civil Application No.8619 of 1999, the same are accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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